

**Planning Commission Workshop  
Project Summary**

Project Number	PC12-112FSI
Project Name	FCC Building C Renovation/Addition
PC Workshop Date	April 16, 2012

**Proposal:** The Applicant is requesting approval of a final site plan for an 18,841 sf addition to the Science and Technology Hall on the Frederick Community College Campus.

**Important Issues:** The subject property is zoned IST (Institutional). Properties in the IST district are not subject to the dimensional requirements of §405, but are instead required to comply with the performance standards under §407 in addition to the development standards in Articles 6 and 7. With regard to the performance standards, the property must meet the following requirements:

- 1) Trip Cap Per Acre - The trip cap must fall under 913 average daily trips per acre. This project will expand the instructional and office space on campus thereby increasing the number of vehicle trips to the site. The Applicant will be providing updated numbers when the traffic impact statement is approved, but the site is expected to fall within the required threshold.
- 2) Percent Stormwater Treated through Nonstructural Practices – Five-percent (5%) of the stormwater volume treated by non-structural practices. The Applicant does not intend to include any new structural SWM practices. All SWM is anticipated to be handled by proposed environmental site design (ESD) micro-bioretenention facilities.
- 3) Street Connectivity Ratio –The FCC campus sits on an individual parcel and is not intended to be subdivided. As no public roadways are necessary for the campus, the street connectivity ratio does not apply.
- 4) Building Design Category – Buildings in the IST district are required to comply with the Class C requirements of §604(d) which requires a minimum of four (4) design elements be incorporated into the design of the building. The Applicant's narrative (attached) has identified the minimum four (4) elements consisting of:
  - a. Element B "Building Structure/Alignment",
  - b. Element E "Ground Floor Design",
  - c. Element I "Mechanical Equipment", and
  - d. Element J "Amenities".

As with other similar applications in the IST district, some elements are difficult to strictly apply do to the function of the buildings and relationship to the public streetscape, especially in a campus setting such as this. Staff has found that in the review of the application, Element J is not met due to the requirement of providing 1 linear foot of seating space per 50 linear feet of sidewalk or 200 sf of open space. The Applicant will have to

select another element or propose an element for Commission approval in order to fulfill the requirement.

**Parking**

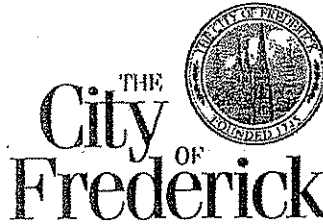
This project currently does not fulfill the parking requirement for "academic, colleges" which are set at a minimum of 1 space per 200 sf of building or 1 per 4 students whichever is greater. The calculations on Sheet 3 of the plan demonstrate that there is a deficit of 72 spaces, which actually totals 74 when taking into account the two spaces being removed under this plan.

However, the parking text amendment that was recently forwarded by the Commission to the Mayor and Board for approval will amend Table 607-1 to create a "community college" classification. The new classification will base the minimum parking standard at 1 space per 4 students with no other minimum requirements, which will allow this project to proceed without having to construct any additional parking facilities.

**Traffic**

The Applicant has provided a Traffic Impact Brief for review in accordance with §1203. At this time there appear to be several items that require resolution, most notably the failure of the northbound left turn lanes on Opossumtown Pike at the Campus entrances which do not have adequate stacking capacity for the projected traffic for the site. These issues must be resolved prior to Planning Commission action on the case.

Randy McClement  
Mayor



Aldermen

Karen Lewis Young  
President Pro Tem

Michael C. O'Connor  
Shelley M. Aloï  
Carol L. Krimm  
Kelly M. Russell

March 22, 2012

Ms. Christine Mayo  
Harris, Smariga, & Assoc., Inc.  
125 S. Carroll Street, Suite 100  
Frederick, MD 21701

**Re: PC12-112FSI – FCC Building C Renovation (NAC #3)**

Dear Ms. Mayo:

Staff has reviewed the above-referenced plan. Staff has divided comments into two sections: issues of major concern, and those that are of a technical nature. In order for this application to be in compliance, please address the following comments:

**ISSUES OF MAJOR CONCERN**

1. The Parking Lot calculations do not comply with the requirements of the LMC at this time. The parking section text amendment is currently in processing and is due to be heard on April 5. Should the text amendment not be approved, the plan must be revised to provide the required parking.
2. How does the removal of eleven (11) trees within the disturbed area impact the required number of landscaped plantings under Section 605(c)(4) for the overall 98.213 acres? (This calculation cannot include area or planting counts under Forest Easements.) Staff is agreeable to one of the two options being performed: A full survey of the existing plantings on the overall site is conducted to prove compliance with Section 605(c)(4); or the eleven (11) trees that are being removed are replaced and the 3 additional trees required under Section 605(c)(4) for the disturbed area are planted.
3. The Building and Urban Design standards narrative attempts to utilize Element J, however, do to the requirements for seating calculation along public sidewalks it does not appear that the requirements can be met. Staff suggests the utilization of Element K under which the discussion of the creation of the courtyard experience and the amenities that are being provided therein should occur. These amenities need to be identified by symbol and label on the site plan to demonstrate compliance.

### TECHNICAL ISSUES

4. Sheet SP-1: If the construction of the 140 space parking lot expansion and the parking deck have been completed, remove the "proposed" labels.
5. Note 4: the proposed building footprint of 8,064 SF is not in proportion to the total floor area of 18,841 SF. A footprint of 8,064 SF at 3 stories (2 floors + a basement) equals 24,192 SF. Please correct the note to address this discrepancy.
6. Note 5: the parking tabulation will need to be revised based on items 1 and 4 above. The tabulation doesn't consider the removal of the two parking spaces in front of the entrance to the building addition.
7. Show and label the proposed bike rack as indicated in Note 5.
8. Note 6: update the Total Trips per acre based on the most recent traffic assessment.
9. Note 10: The site is exempt from the APFO for CAPF-R, CAPF-WL, and CAPF-SL by virtue of being previously platted. Please update this note to reflect this and note which sections of the APFO the exemption is from. (P.B. 27 Page 172)
10. Note 15: Remove. The landscaping notes are provided on sheet 4.
11. Provide a scale on sheet SP-4.
12. Update sheet legend on sheet SP-1 to include all of the actual sheet numbers.
13. Remove Engineer approval block from Sheet E-1 and include cutsheets of lighting fixtures.
14. Sheet E-1: Footcandle values should be extended until they reach 0.0 for the new fixtures that are being installed.
15. Sheet E-1: Provide the height of the pole lights to be relocated.
16. Remove Sheet SP-6 from set. It will be held in the file separately from the approved site plan set.
17. Continue the sidewalk connection along the periphery of the parking lot from the addition entrance to the existing Building C entrance.

<i>APPROVAL AGENCIES</i>	<i>NO WRITTEN RESPONSE</i>	<i>RESPONSE NO COMMENT</i>	<i>VERBAL OR WRITTEN COMMENTS ATTACHED OR BELOW</i>
CITY ENGINEERING DEPARTMENT		X	
TRAFFIC ENGINEER	X		
FIRE ENGINEER		X	
DEPARTMENT OF PUBLIC WORKS		X	
COUNTY HEALTH DEPARTMENT			X
COUNTY DEPARTMENT OF PUBLIC WORKS			Please extract comments from the County System and provide separate point-by-point response with resubmission.

**Comments are required before this plan can move forward**

\*\*\*\*Important\*\*\*\*

Once all of the comments have been addressed, please submit 16 paper copies (**one of which is highlighted**) of the plan and a response letter addressing all agency comments. This office shall receive the resubmission, with all comments addressed, of this plan no later than April 23 to be placed on the **May 21, 2011** Planning Commission Workshop agenda. If you have any additional questions concerning this project, please feel free to contact me at 301-600-3187 or if you prefer by electronic mail at [jlove@cityoffrederick.com](mailto:jlove@cityoffrederick.com).

Sincerely,

  
Jeffrey D. Love  
City Planner

CC: Gabrielle Dunn, Division Manager of Current Planning

Jeff Love

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From: Dillman, Kimberly <KDillman@FrederickCountyMD.gov>  
Sent: Tuesday, March 13, 2012 9:03 AM  
To: Jeff Love  
Subject: FCC science-tech hall

Conditional approval

Adequate water and sewer taps must be available

All hazardous waste to be removed properly – contact MDE Larry Milsicia at 410-537-3400

*Kimberly D. Dillman R.S.*

Program Supervisor

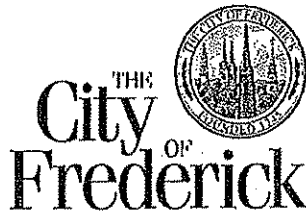
Well and Septic Division

[kdillman@frederickcountymd.gov](mailto:kdillman@frederickcountymd.gov)

phone 301-600-3155

fax 301-600-3180

Randy McClement  
Mayor



Aldermen

Karen Lewis Young  
President Pro Tem

Michael C. O'Connor  
Shelley M. Aloï  
Carol L. Krimm  
Kelly M. Russell

March 30, 2012

MCV Associates, Inc.  
4605-C Pinecrest Office Park Dr  
Alexandria VA 22312

**Subject: Frederick Community College – Enrollment Services Building**

Dear Mr. Mehra:

Thank you for the opportunity to review the traffic impact brief sent March 2, 2012 for the proposed FCC-Science & Technology Building in the City of Frederick.

- The project, as proposed, add 18,841 square foot on to the existing building.
- Access will be provided via existing driveways on Opossumtown Pike.

Based on the information provided, The City of Frederick offers the following comments:

1. In accordance with the May 2007 memorandum from the City Engineer, all electronic files for traffic impact studies shall be submitted with the study. In this case, the applicant shall submit the Synchro and electronic count data files.
2. Note that as the City simply required a traffic brief for this development, as further site improvements come along, City staff will combine these trips with any proposed trips to meet the traffic impact study applicability requirement of LMC Section 1203 since the scope has been limited due to the proposed project size.
3. The Synchro summary sheets provided do not include the queue length calculations as indicated under the "Left Turn Stacking Length Analysis" section. While the Synchro files will also provide, please include the complete summary sheets with the updated study.
4. The "Left Turn Stacking Length Analysis" section clearly indicates a deficiency. Based on field observations, the left-turn lanes are inadequate under existing conditions and based on the analyses, will continue to be inadequate upon construction. The project should revise the study to indicate that this project will lengthen the storage lanes to meet LMC Section 1203(e)(3).
5. Traffic Volume exhibits should include evening peak hour trips in parenthesis.

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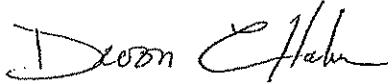
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**ENGINEERING DEPARTMENT**

Municipal Office Annex • 140 W. Patrick Street • Frederick, Maryland 21701-5415 • 301-600-1498 • Fax 301-600-3843 •  
www.cityoffrederick.com

The City will require an updated traffic impact study scope to reflect the above comments. Questions or comments regarding this review can be addressed to me at [dhahn@cityoffrederick.com](mailto:dhahn@cityoffrederick.com) or 301-600-1443.

Sincerely,



The City of Frederick  
Devon C. Hahn, P.E.  
City Traffic Engineer

cc: Zack Kershner, City Engineer  
Gabrielle Dunn, Division Manager of Current Planning  
Jeff Love, Case Planner  
File Copy  
Corresp



**Crabtree, Rohrbaugh & Associates  
Architects**

401 East Winding Hill Road  
Mechanicsburg, Pennsylvania 17055  
phone: (717) 458-0272 - fax: (717) 458-0047

February 28, 2012

The City Of Frederick  
Planning Department  
140 West Patrick Street  
Frederick, MD 21701

Attention: Jeffrey D. Love, City Planner

Re: Frederick Community College  
- Building - "C" Additions and Renovation

File: #####

Dear Mr. Love,

This correspondence outlines compliance measures required for Class C buildings in the City of Frederick Land Management Code, Section 604 Building and urban Design Standards.

The addition to Building-C is predominantly designed to provide contemporary laboratory teaching spaces for the college science department while also providing much needed student collaboration and interaction areas. The proposed alterations to Building-C are comprised of a two story addition housing six (6) labs, connected to the north-west façade of the existing building, and renovations to four (4) existing laboratory spaces within the existing building. The construction site is located on a steep grade where the first level, at the point of main entry, is located one (1) full story above the mechanical basement space. See included elevations for graphic depiction.

Prominent architectural features reflect the use of materials and exterior finishes found on other buildings throughout the campus, adding to an overall cohesive aesthetic. Brick veneer, metal panels, and sloped standing seam metal roofing are all repetitive architectural elements used throughout Frederick Community College campus.

Design elements include: Building Structure/Alignment, Ground Floor Design, Mechanical Equipment, and Amenities. A justification of these four (4) elements is described as follows:

**ELEMENT B - Building Structure/Alignment**

# Crabtree, Rohrbaugh & Associates

## DESIGN CONFERENCE REPORT

Page 2

### B.1.a. – Base

The proposed two (2) story building has been provided with a base of brick veneer and a protruding band element of brick on the lower section. The elements of solid brick piers and inset brick panels ground the lower portion of the façade, where visible above grade, and offer the characteristics of a heavy base to the façade. The exterior design of the building is architecturally divided into two (2) distinct elements. The façade of the main entrance element offers a moment of distinct deviation from the existing language of the building and provides a prominent presence of entry to the adjacent parking lot. The large vertical expanse of aluminum curtain wall, framed by brick piers, and the standing seam metal shed roof provide an updated contemporary feel while still providing elements of the existing construction. This large expanse of glass will provide ample natural light in the day and act as a beacon of light in the night, effectively standing as a new “gateway” for the south side of campus.

### B.1.b. – Middle

The entry atrium being the first of the two distinct elements previously mentioned, the second element is the mass of façade adjacent to the educational laboratory spaces. The design language of this element provides a more direct tie to the existing building both in its formal rhythm and materiality. Vertical expanses of brick create a distinct dimension of bays on the main façade while framing the punched openings and creating a layered shadow effect. The first and second level contrive of the primary frontage of the façade, divided with a band element of metal accent panels.

### B.1.c. – Cap

The cap of the structure is formed by the roof of the addition which will be matched to the existing standing seam metal roof both in mass, pitch, and color. The primary roof element will act as a direct tie from existing to new and read as a continuation through the main entrance façade element. The form and color of this roof is a predominate standard across the entire campus of Frederick Community College. The two (2) foot overhang with metal fascia panels will create a drastic shadow line at the soffit and accentuate the termination of the main façade.

## ELEMENT E – Ground Floor Design

The main entry of the building is located within a distinct architectural moment both in the design of the plan and elevation. The large entry atrium acts as a transition point from existing construction to new construction and is located at grade. The design of a new entry plaza will act as an anchor for pedestrian access from the existing parking lot, while also offering outdoor gathering space for student interaction. The occupants will proceed from the parking area, through the entry plaza, under the overhead entrance canopy, into a vestibule space, and directly into the ground level of the main atrium. At this point the

# Crabtree, Rohrbaugh & Associates

## DESIGN CONFERENCE REPORT

Page 3

occupant will be presented with an open grand stair (or elevator) to the second level of the building, or direct ground floor access to the public study lounge.

### ELEMENT I – Mechanical Equipment

The addition to Building-C will provide an interior basement level mechanical room for all necessary HVAC, electrical, and service components with exterior access. The necessary exhaust stacks for the required science program will be located on the roof and will be incorporated as an architectural element of the building.

### ELEMENT J – Amenities

At the point of main entry into the building, an entry plaza will be incorporated to offer open space at the transition from parking to building, while also providing outdoor space for student interaction. The plaza will incorporate ornamental/architectural lamp posts, an entry canopy, ample bench seating, and landscape design such planting beds and shrubbery consistent with Campus standards.

If you have any question or require additional information, please contact me.

Sincerely,  
Crabtree Rohrbaugh and Associates, Architects



Stuart M. Rothenberger, AIA, LEED® AP  
Director of Higher Education



**Planning Commission Workshop  
Project Summary**

Project Number	PC12-56PSU Prelim Subdivision Plan
Project Name	Nicodemus Property
PC Workshop Date	April 16, 2012

**Proposal:**

Applicant proposes a revision to the original Preliminary Subdivision Plan PC08-584PSU, approved on June 13, 2011, to reduce size and relocate 89 lots. With reconfiguration of the lots, the plan gains open space area and the ability to add a different style of townhome. The plan maintains the same number of total units at 457; however, with lot reconfiguration, there is an increase of 5 townhomes and decrease of multi-family units by 5, for a distribution of 67 single family, 224 townhomes, 122 multi-family homes and 44 multi-family units integrated in the commercial center.

**Important Issues:**

**Trash Collection**

The subdivision contains both private and public alleys and a number of the lots front on open space areas and access from the public and private alleys. This poses a problem for trash collection since the City as policy does not collect trash from alleyways. However, the Applicant has designed the public alleys for truck traffic with adequate width and road material standards. For the units where there is only private alley access, it proposed for 2'x12' concrete trash pads to be provided along the street for a nightly collection point.

**Accessibility**

Lots 285-287 are designed with a shared driveway across the front yards that will require a joint access easement agreement, in addition to public utility easement with the City for the proposed storm drain line contained in the driveway.

The sidewalk from Road A to Lot 243 that contains the historic house should be eliminated. The house has public access from alley 5 and a sidewalk should be installed for access to the house from its road frontage.

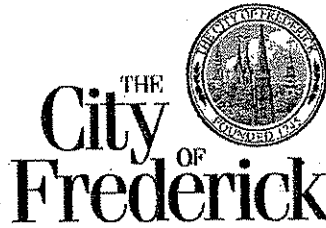
**Townhome Typicals**

The Applicant has proposed four (4) optional designs for townhomes that includes different parking scenarios: 1) 2-car garage; 2) 1-car garage and a 1 parking pad space; 3) 2 parking pad spaces; and 4) an integral 2-car garage. Two single family unit styles have been eliminated from the original plan.

**Attachments:**

- Preliminary Subdivision Plan
- Staff and agency comments

Randy McClement  
Mayor



Aldermen

Karen Lewis Young  
President Pro Tem

Michael C. O'Connor  
Shelley M. Aloï  
Carol L. Krimm  
Kelly M. Russell

April 9, 2012

Chris Smariga  
Harris Smariga & Associates  
125 S Carroll Street, Suite 100  
Frederick, MD 21701

**Re: PC12-56PSU Preliminary Subdivision Plan: Nicodemus Property (NAC #7)**

Dear Mr. Smariga:

Staff has reviewed the above-referenced plan. In order for this application to be in compliance, please address the following comments:

1. Revise and submit DRAFT HOA documents.
2. Landscaping Sheets to be corrected as follows:
  - a. Sheet C-9, correct reference to Level 1 Screening for lot numbers; should be Lots 285-304. Edit 605(c)(2) note as follows: *Level 1 street trees will be counted to determine the balance needed to verify during the site plan stage. Protected HOA and forest conservation landscape credit areas shall be designed at the site plan stage and count towards property landscaping.*
  - b. Level 1 Screening on Lots 285-304 was counted at 70, please verify.
  - c. All tree totals for OS areas should not include adjacent street trees:
    - i. Verify OS-3, counted 20;
    - ii. Verify OS-17, counted 45;
    - iii. Correct OS-2 (Sheet C-10), to 24 as provided;
    - iv. Verify OS-1, eliminate the CC over sidewalk to Lot 243 and count is 73;
    - v. Verify OS-5, counted 16;
    - vi. Verify street tree counts, i.e. East Church Street, counted 79; and 7<sup>th</sup> Street, counted 19 as shown;
    - vii. Label the specimen tree (north of tot lot) to remain in OS-1;
    - viii. On Sheet C-9, specimen trees in OS-1 should be 4 to remain and correct spelling of specimen; and

- ix. Landscape plans must be signed and sealed by a registered Landscape Architect.
  - x. There appears to be a PE utility easement through OS-12 that trees cannot be planted within unless PE approves; otherwise, forest conservation and landscape credit trees must be removed and calculations adjusted.
- 3. Label the SWM open space areas and provide acreages on Sheet 1.
  - 4. Provide names for all streets and alleys. Note #24 in regard to private alleys 7, 8, and 9 should be 7 (south), 8 (east), and 9 (east) to identify and separate alley names to be maintained by the City or not. Road A section from East Church Street to Road A intersection should probably be a different road name and keep the Road A confined to the road circle in the subdivision.
  - 5. In note #27, provide plan case number and approval date.
  - 6. Correct Note #20 listing the correct lots inclusive to the design elements.
  - 7. Remove appearance of BRLs from HOA OS-4 on Sheet C-6.
  - 8. The sidewalk from Road A to Lot 243 that contains the historic house should be eliminated. The house has public access from alley 5 and a sidewalk should be installed for access to the house from its road frontage.
  - 9. Address all agency comments attached.

\*\*\*Important\*\*\*

Once **all** of the comments have been addressed, please submit 10 paper copies (**one of which is highlighted**) of the plan and a response letter addressing all agency comments. This office shall receive the resubmission, with all comments addressed, of this plan no later than **April 23** to be placed on the **May 14, 2012** Planning Commission workshop agenda.

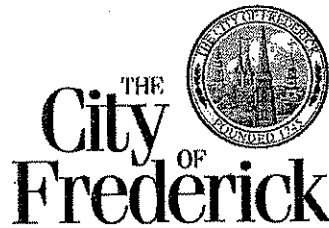
If you have any additional questions, please feel free to contact me at 301-600-1718 or if you prefer by electronic mail at [preppert@cityoffrederick.com](mailto:preppert@cityoffrederick.com).

Sincerely,

Pam Reppert  
City Planner

CC: Baker Park East LLC, c/o Paul Sill, 610 E. Church Street, FREDERICK, MD 21701  
Gabrielle Dunn, Division Manager of Current Planning

Randy McClement  
Mayor



**Aldermen**

Karen Lewis Young  
President Pro Tem

Michael C. O'Connor  
Shelley M. Aloï  
Carol L. Krimm  
Kelly M. Russell

**Date: APRIL 6, 2012:**

Engineering, Land Development and Traffic Comments

Re: PZ-12-00056: Nicodemus Property

The Engineering Department requests a point-by-point response letter to the following comments. Please include the original comments in your point-by-point resubmittal.

1. Current SWM pond configuration of outfall from weir wall to road culvert may inundate adjacent properties as culvert flapper gates close due to floodplain rise.

Reviewed by Kershner, Walzl, Wright, Hahn, and Albee. Entered 4/5/12 by sstamper.

**Planning Commission Workshop  
Project Summary**

Project Number	PC12-54FSI Final Site Plan
Project Name	Nicodemus Property
PC Workshop Date	April 16, 2012

**Proposal:**

This is the residential site plan only for the Nicodemus subdivision, which includes the 67 single family units and the 346 townhomes and condo units. The commercial area of the subdivision will be submitted under a separate site plan for approval.

**Important Issues:**

Section 604 Urban Design Standards

The Applicant has submitted a compliance report for Section 604 to identify and demonstrate the required elements of design for the all the residential units. The Applicant has proposed two different sets of design elements for the single family units.

Roads

The subdivision contains a mix of private and public alleys for the units to have access to the rear of the units with garages or pad parking. All of the roads or alleys have been approved by the Fire Engineer for accessibility to the units. The Applicant must provide street and alley names for approval by the City and County.

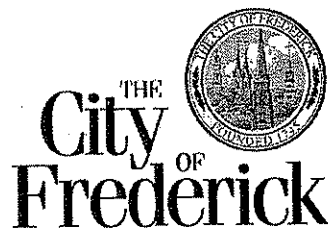
Trash Collection

Although all units have access from either a public street or private/public alley, the City as policy does not pick up trash in alleyways. However, the Applicant has designed the public alleys for truck traffic with adequate width and road material standards. For the units where there is only private alley access, there are 2'x12' concrete trash pads provided along the street for a nightly collection point. It would have to be understood that trash should be left only on the pads on the designated collection night since there will be no screening corals around the pads. This could become problematic and unsightly along the street if rules are not adhered to. If there is only one trash pad within the subdivision, Staff would advise that the abutting streets be either redesigned to eliminate the need for the trash pad or a trash coral provided off the streets and a private hauler paid for by the subjected lots.

**Attachments:**

- Site Plan
- Compliance Report for Section 604
- Staff and agency comments

Randy McClement  
Mayor



Aldermen

Karen Lewis Young  
President Pro Tem

Michael C. O'Connor  
Shelley M. Aloï  
Carol L. Krimm  
Kelly M. Russell

April 6, 2012

Chris Smariga  
Harris Smariga & Associates  
125 S Carroll Street, Suite 100  
Frederick, MD 21701

**Re: PC12-54FSI Final Site Plan: Nicodemus Property (NAC #7)**

Dear Mr. Smariga:

Staff has reviewed the above-referenced plan. In order for this application to be in compliance, please address the following comments:

1. Correct Note #20 and the Compliance Report for single family lots that are the exemption to elements.
2. Revise and submit DRAFT HOA documents to protect trees on private lots from future removal and/or without replacement. In the HOA documents, there should be a requirement for trees to remain on lot; if trees are determined hazardous and must be removed, then the tree needs to be replaced by homeowner or HOA.
3. A temporary construction easement will need to be obtained from the adjacent property owner of the Gas House Pike roadway to be removed. Label proposed construction easement area.
4. Provide names of all roads/streets/alleys and add to road details on Sheet C-5.
5. On Sheet C-5 details for units, the porch on the single family lot detail should not be optional in order to comply with Main Entrance feature of Section 604.
6. Landscaping Sheets to be corrected as follows:
  - a. Sheet C-9, correct reference to Level 1 Screening for lot numbers; should be Lots 285-304.
  - b. Level 1 Screening on Lots 285-304 was counted at 70, please verify.
  - c. All tree totals for OS areas should not include adjacent street trees:
    - i. Verify OS-3, counted 20;

- ii. Verify OS-17, counted 45;
  - iii. Correct OS-2 (Sheet C-10), to 24 as provided;
  - iv. Verify OS-1, eliminate the CC over sidewalk to Lot 243 and count is 73;
  - v. Verify OS-5, counted 16;
  - vi. Verify street tree counts, i.e. East Church Street, counted 79; and 7<sup>th</sup> Street, counted 19 as shown;
  - vii. Label the specimen tree (north of tot lot) to remain in OS-1;
  - viii. On Sheet C-9, specimen trees in OS-1 should be 4 to remain and correct spelling of specimen; and
  - ix. Landscape plans must be signed and sealed by a registered Landscape Architect.
  - x. There appears to be a PE utility easement through OS-12 that trees cannot be planted within unless PE approves; otherwise, forest conservation and landscape credit trees must be removed and calculations adjusted.
7. Regarding proposed signage, on Sheet C-10 show the proposed location of the community sign in OS-1 and in Note #22, how many community identification signs are proposed?
  8. Note #24 in regard to private alleys 7, 8 and 9 should be 7 (south), 8 (east) and 9 (east) to identify and separate alley names to be maintained by the City or not. Road A section from East Church Street to Road A intersection should probably be a different road name and keep the Road A confined to the road circle in the subdivision.
  9. Remove appearance of BRLs from HOA OS-4 on Sheet C-3.
  10. Where will Lots 2-21 have trash picked up. Road A is too far away and separate by landscaping/forest area and there does not seem to be trash pads provided for this area. Staff suggests that a screened trash coral be provided for Lots 1-21 at the dead end alley and private trash hauler paid for.
  11. The sidewalk from Road A to Lot 243 that contains the historic house should be eliminated. The house has public access from alley 5 and a sidewalk should be installed for access to the house from its road frontage.
  12. Address all agency comments attached.

**\*\*\*\*Important\*\*\*\***

Once **all** of the comments have been addressed, please submit 10 paper copies (**one of which is highlighted**) of the plan and a response letter addressing all agency comments. This office shall receive the resubmission, with all comments addressed, of this plan no later than **April 23** to be placed on the **May 14, 2012** Planning Commission workshop agenda.

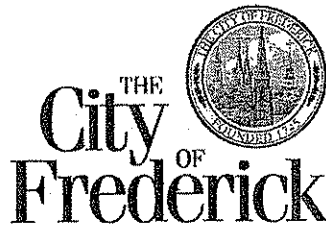
If you have any additional questions, please feel free to contact me at 301-600-1718 or if you prefer by electronic mail at [preppert@cityoffrederick.com](mailto:preppert@cityoffrederick.com).

Sincerely,

Pam Reppert  
City Planner

CC: Baker Park East LLC, 7302 DANCE HALL RD, FREDERICK, MD 21701  
Gabrielle Dunn, Division Manager of Current Planning

Randy McClement  
Mayor



**Aldermen**

Karen Lewis Young  
President Pro Tem

Michael C. O'Connor  
Shelley M. Aloï  
Carol L. Krimm  
Kelly M. Russell

Date: APRIL 5, 2012:

Engineering, Land Development and Traffic Comments

Re: PZ-12-00054: Nicodemus Property

The Engineering Department requests a point-by-point response letter to the following comments. Please include the original comments in your point-by-point resubmittal.

1. E. Church Street should flare out at intersections to provide for adequate left-turn and right-turn lanes at 7<sup>th</sup> Street, Road E and Road A.
2. Stormdrain in private alleys or on HOA property are to be privately owned and maintained.
3. Where water, sewer, and stormdrains are located in alleys, locate within R-O-W with 10' clearance between each and additional easement along edge(s) of R-O-W.

Reviewed by Kershner, Hahn, Walzl, and Wright. Entered 4/5/12 by sstamper.

**Pam Reppert**

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**From:** Dillman, Kimberly <KDillman@FrederickCountyMD.gov>  
**Sent:** Wednesday, April 04, 2012 2:22 PM  
**To:** Pam Reppert  
**Subject:** nicodemus property PC12-54FSI

Conditional approval

Health Department to be contacted to witness abandonment of septic system – well abandonment by licensed well driller or under Health Department direct supervision.

Existing house must be connected to public utilities or all plumbing removed and convert to storage building.

Adequate water and sewer taps must be available

*Kimberly D. Dillman R.S.*

Program Supervisor

Well and Septic Division

[kdillman@frederickcountymd.gov](mailto:kdillman@frederickcountymd.gov)

phone 301-600-3155

fax 301-600-3180

# Nicodemus Property

Case # PC 12-54FSI

## **COMPLIANCE REPORT PER SECTION 604, LAND MANAGEMENT CODE CITY OF FREDERICK**

The following Urban Design Guidelines are incorporated into the Nicodemus Farm TND project per the Building and Design Standards set forth in the LMC.

### **Section 604 (b): Single Family/Duplex Dwellings**

Class B dwellings must include at least 5 elements of the urban design guidelines. As permits are submitted, detailed information of the elements will be provided on an individual lot/unit basis.

#### **A. Front Elevation – (Lots 24, 25, 162 and 178 only will meet this guideline)**

A dwelling will include two of the following architectural elements:

1. dormers,
2. front porches,
3. bay windows,
4. balconies or,
5. other alternative features approved by the Planning Commission
  - a. Brick front

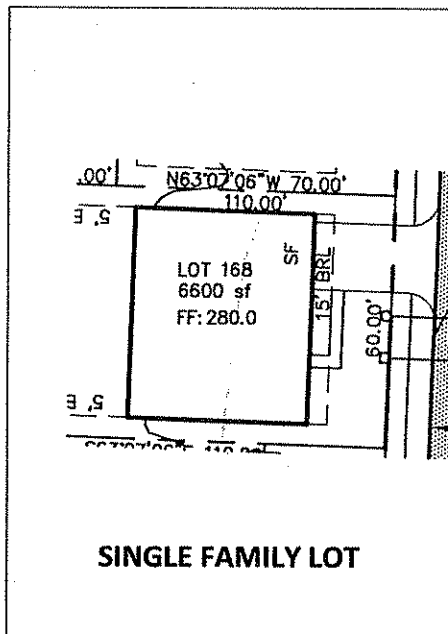


**The rendering of the single family home incorporates urban design guideline elements including dormers and front porches in its front elevation. Other elements may be substituted at building permit.**

**B. Main Entrance** (all lots will meet this guideline)

The main entrance of each entrance will face the street or a courtyard and will include either a stoop or porch. If the home has a covered front porch as shown in the single family home illustration, it will comply with the design criteria set forth in the LMC.

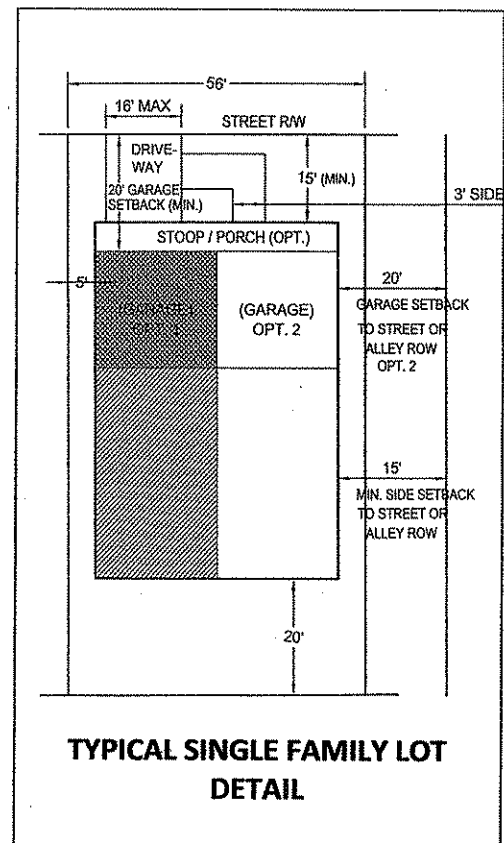
**C. Vehicle and Pedestrian Areas** (all lots excepting Lots 24, 25, 162 & 178 will meet this guideline). Requirements 1-4 as listed in the LMC will be met.



**All single family homes have driveways that will also serve as walkways from the street. The driveways are connected to the main entrance of the house by a minimum 3 foot sidewalk. The use of the driveway, although greater than 3 feet wide, will reduce the total impervious area of the lot and create a more aesthetically pleasing front yard.**

**D. Driveways** (all lots will meet this guideline)

Impervious surfaces are kept to a minimum and overall comprise less than 50% of the front yard. The driveways do not comprise more than 50% of the front lot line and are in conformance with separation standards.



## **Nicodemus Property Compliance Report**

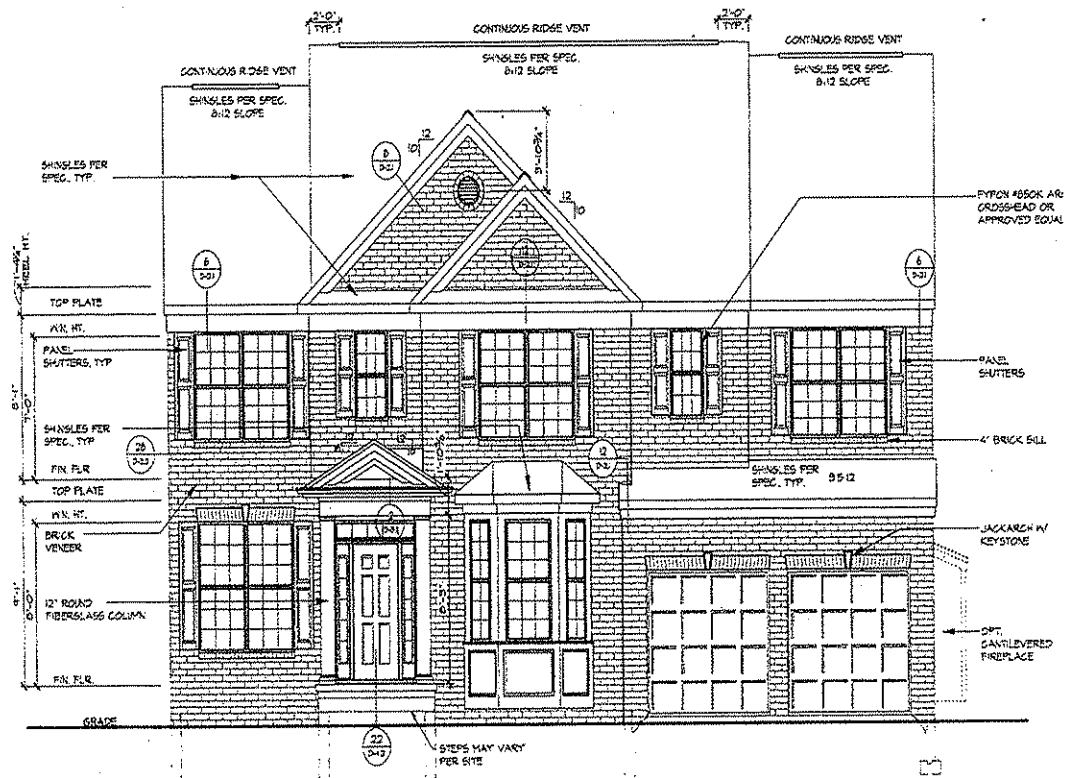
**Case # PC 12-541 FSI**

**March 2012**

### **G. Exterior Finish Materials (all lots will meet this guideline)**

As illustrated below, there will be no single family homes constructed of concrete block, plain concrete or corrugated metal. All homes will meet the criteria set forth for exterior finish material.

### **H. Windows and Entryways (all lots will meet this guideline)**

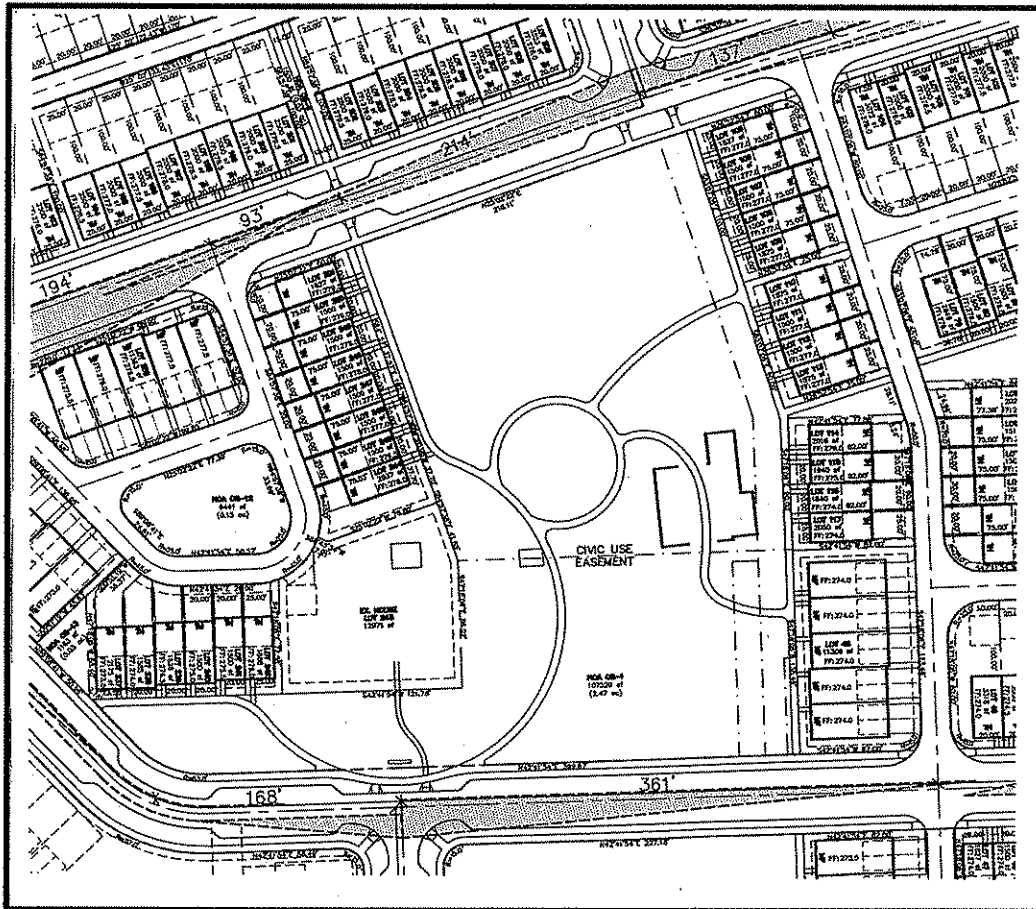


**Windows and entryways will comprise a minimum of 15% of the street facing facade and meet the vertical to horizontal ratio criteria as well as the placement guidelines.**

**Section 604(c): Multi-Family Dwelling Units**

Class B dwellings must include at least 4 elements of the urban design guidelines.

- A. Main Entry-** entryways will face a street sidewalk or common areas.
- B. Vehicle and Pedestrian Areas**

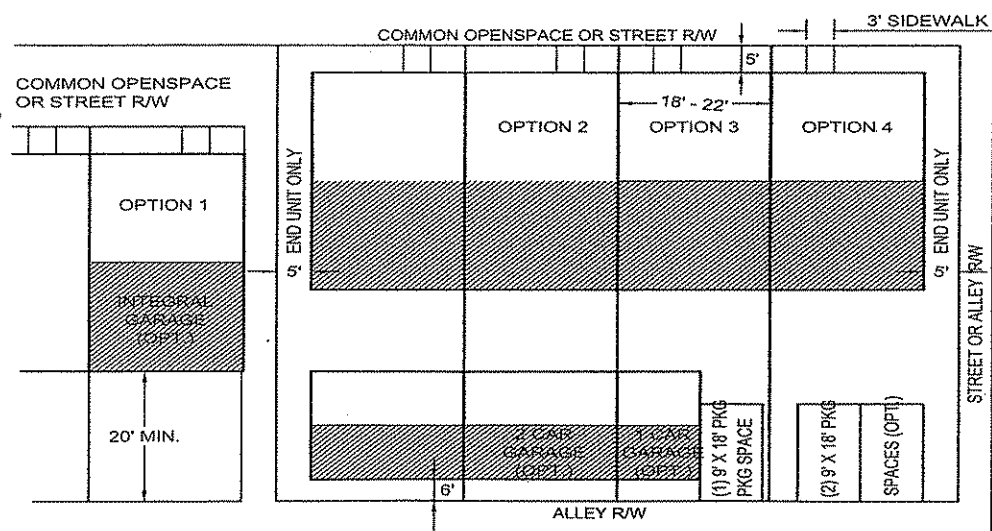


**The townhomes and multifamily units face either a common area or the street as shown in this layout. Sidewalks provide connection throughout the project to common areas as well as other parts of the residential neighborhood. All sidewalks are constructed in accordance with specifications found within the City's Street Improvement Standards.**

# Nicodemus Property Compliance Report

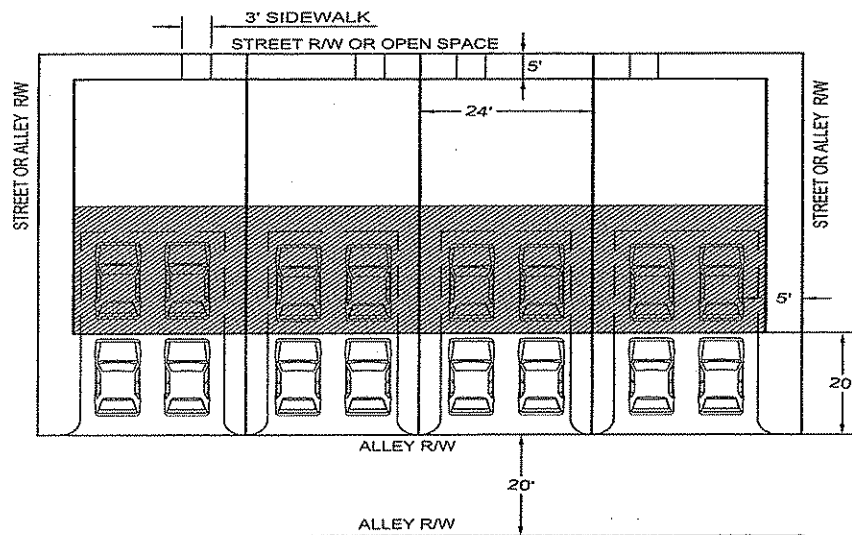
Case # PC 12-541 FSI

March 2012



TYPICAL TOWNHOUSE LOTS

All of the townhomes and multifamily lots are served by rear loaded alleys that access either parking areas or garages. The multifamily garages are integral to the units.



TYPICAL MULTI-FAMILY LOT

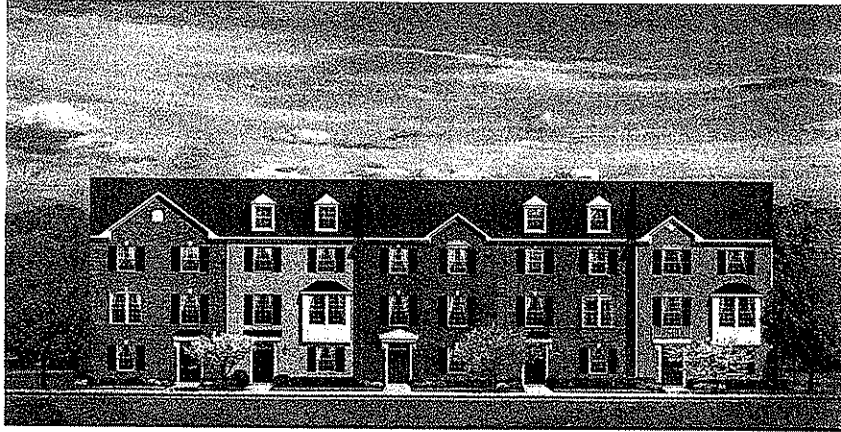
## **Nicodemus Property Compliance Report**

**Case # PC 12-541 FSI**

March 2012

### **E. Exterior Finish Materials**

Neither the townhomes nor the two over two multi-family units will be constructed of concrete block, plain concrete or corrugated metal. All homes will meet the criteria set forth for exterior finish material.



**TYPICAL TOWNHOUSE UNITS**

Average Facade Area = 600 sf +/- per unit

Average Window Area = 180 sf +/- per unit

Average % coverage = 30%+/-



**TYPICAL TWO OVER TWO MULTIFAMILY UNITS**

Average Facade Area = 915 sf +/- per unit

Average Window Area = 360 sf +/- per unit

Average % coverage = 39%+/-

### **F. Windows and Entryways**

As shown in the illustrations, at least 15% of the street facing facades will include the main entryway and windows. The windows will meet the horizontal/vertical ratios and grouping requirements.

**Planning Commission Workshop  
Project Summary**

Project Number	PC12-223PFC Prelim Forest Plan
Project Name	Nicodemus Property
PC Workshop Date	April 16, 2012

**Proposal:**

The Applicant has revised the Preliminary Forest Conservation Plan PC08-585PFC approved by the Planning Commission on June 13, 2011, to reflect some increase in open space landscape credit areas, due to the reconfiguration of some lots. There is also a significant decrease in the original open space 12 afforestation area, HOA park area south of Gas House Pike, and the forest to be planted instead within the SWM open space 16.

**Important Issues:**

**Landscape Credit**

Staff feels Section 721(D)(5)(F)(1) as written for interpretation is conflicting with FCA requirements for landscape credits. The Applicant has met the Section minimal requirement of 7 shade trees and 20 shrubs for every 10,000 s.f.; however, this amount of planting is low to be considered for full credit.

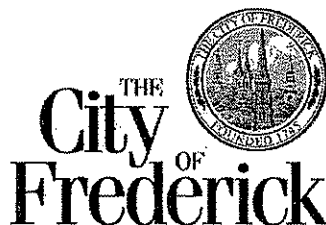
The FCA definition of "Forest" is "trees and other woody plants covering a land area of 10,000 s.f. or greater" and "includes areas that have at least one hundred (100) live trees per acre", which calculates to 23 trees for 10,000 s.f. The difference between landscape and afforestation areas is the obvious practice of mowing and manicuring the landscape areas. Per the Annotated Code of Maryland, Title 08 Department of Natural Resources, Subtitle 19 Forest Conservation Chapter 03 Article IX Priorities and Time Requirements for Afforestation and Reforestation 9.1.A(3), "*When all other options, both on-site and off-site, have been exhausted, landscaping as a mitigation technique conducted under an approved landscaping plan that establishes a forest at least 35 feet wide and covering at least 2,500 square feet of area.*"

In the future, Staff will be taking a look at this Section and clear up the confusion and correcting the misprint of regulations that was adopted under the 2005 LMC.

**Attachments:**

- Preliminary Forest Conservation Plan
- Staff and agency comments

Randy McClement  
Mayor



Aldermen

Karen Lewis Young  
President Pro Tem

Michael C. O'Connor  
Shelley M. Aloï  
Carol L. Krimm  
Kelly M. Russell

April 10, 2012.

Fran Zeller  
Harris Smariga & Associates  
125 South Carroll Street, Suite 100  
Frederick, MD 21701

**Re: PC12-223PFC Preliminary Forest Conservation Plan:  
Nicodemus Property (NAC #7)**

Dear Mr. Zeller:

Staff has reviewed the above-referenced plan. In order for this application to be in compliance, please address the following comments:

1. There appears to be a PE utility easement through OS-12 that trees cannot be planted within unless PE approves; otherwise, forest conservation and landscape credit trees must be removed and calculations adjusted.
2. Remove sidewalk to Lot 243 and disturbance area in the CRZ of the specimen trees.
3. Label all OS areas and match site plan/prelim subdivision plan numbering.
4. Add to the Landscape Planting Schedule the total acreage of landscape areas and trees per acre. Add also note on the plan that the landscape credit areas must survive 100%.
5. Inspection notes should identify plantings as afforestation in Note 3 and landscape credit areas in Note 4.
6. Maintenance and Management Plan correct note 2 to identify afforestation at 85% and add landscape at 100%.

**\*\*\*\*\*Important\*\*\*\*\***

Once **all** of the comments have been addressed, please submit 10 paper copies (**one of which is highlighted**) of the plan and a response letter addressing all agency comments. This office shall receive the resubmission, with all comments addressed, of this plan no later than **April 23** to be placed on the **May 14, 2012** Planning Commission hearing agenda.

If you have any additional questions concerning this project, please feel free to contact me at 301-600-1718 or if you prefer by electronic mail at [preppert@cityoffrederick.com](mailto:preppert@cityoffrederick.com).

Sincerely,

Pam Reppert  
City Planner

CC: Gabrielle Dunn, Division Manager of Current Planning



Planning Commission Workshop  
4/16/12  
Crum 2012 Annexation

What this annexation is:

- This is a new annexation case for the Crum Farm approximately 250 acres. The applicant is asking to use the density and nonresidential square footage from the Crum 2009 Annexation (1,200 DU's and 1,300,000 sq ft) as the maximum build out. No new units or nonresidential square footage is being proposed with this annexation.
- The Planning Commission can recommend placing proffers on this annexation agreement.
- The Planning Commission can recommend approval or denial of this annexation without affecting the Crum 2009 Annexation agreement.

What this annexation is not:

- It is not amending any of the conditions of the Crum 2009 Annexation agreement.
- The Planning Commission and Mayor & Board of Aldermen cannot change the Crum 2009 Annexation agreement. In order to change the Crum 2009 Annexation agreement, the applicant would need to reapply and go through the Planning Commission and Mayor & Board of Aldermen.

**Policy Issues:**

There are several policy issues that need to be addressed with this annexation.

**Tier Three**

The first is that this property is shown in the 2010 Comprehensive Plan as being in Third Tier on the Land Use Map. Attached is Page 25 & 26 from the Land Use Element of the Comprehensive Plan describing all three tiers. Tier Three is intended to be considered after Tier One and Two are "substantially developed".

Attached is a spreadsheet showing the properties in Tier One and Two and which properties have been annexed into the City of Frederick. Almost 59% of the areas shown in the first two tiers have been annexed and this is including the Keller Property (which has just started the annexation process).

Does the City of Frederick want to start annexing into Tier Three?

## PRSWA

The City of Frederick entered into the Potomac River Water Service Agreement with Frederick County in March 2006. This agreement between the City of Frederick and Frederick County shows the area that can be serviced by water. This property was not considered in that agreement. City Engineering has been in conversation with Frederick County about amending this agreement.

Should the PRWSA be amended prior to annexation?

## Density

The last policy issue concerns the density of the development. The applicant's graphic shows the issue well. By just using the land area of the Crum 2009 Annexation, the overall density would be about 9.2 dwelling units per acre and the nonresidential portion would have a FAR of .37. If this annexation was approved, the overall development would have a density of about 4.5 units per acre and a FAR of .27.

In comparisons, the downtown has a density of about 12-16 units per acre. Maryland's Smart Growth requirement is 3.5 dwelling units per acre.

The average development in the City has a FAR of .25. This is typically a one story development (office or commercial building). For comparison Riverside (once build out) would have a FAR of about .32.

In the 2009 Annexation Agreement, the maximum number of units was set at 1,200 dwelling units and 1,300,000 square feet of nonresidential. These numbers are the maximum and are not guarantee. The applicant will still need to go through the Planning Commission process. With the amount of improvements in the Crum 2009 Annexation Agreement, the applicant will want to try to maximize the potential of this development.

With the Crum Annexation 2009, there was concern from citizens and the Board of County Commissioners that the City was developing in an uncontrolled pattern.

How should this part of the City be developed?

## General Comments:

### Crum 2009 Annexation Agreement

There are many conditions in the Crum 2009 Annexation Agreement, but the phasing of the development is really constrained by these two requirements. Again nothing in the Crum 2009 Annexation agreement can be altered. This is for informational purposes only.

In the Crum 2009 Annexation Agreement, the applicant is permitted to build either 350 or 450 dwelling units until Willowbrook Road is designed and "guaranteed in a manner acceptable to the City." This condition does not change

The remainder of the development cannot not have building permits "until after full funding for the design and construction of the US 15 / Biggs ford Road interchange has been approved by the State Highway Administration, the City and other required governmental agencies."

#### Bloomfield Road

A section of Bloomfield Road would be included in the City's road inventory. The City would be required to maintain this road which would not serve any residents. DPW surveyed this section of road and there are 6 road crossings with culvert pipes and head walls which will be maintained by the City before collecting taxes. The City of Frederick will be maintain these roads until improved by the developer. This could be 15 or more years until that time and we could find the City paying to rebuild roads like Bloomfield before the Developer ever gets around to improving them. Staff would suggest as an option, that there should be a sunset date (say 5 years) by which the Developer would be required to upgrade Bloomfield (and any other substandard Roads that DPW might identify

#### Infrastructure

By enlarging the area of development, the City will be required to maintain more water lines and roads. The County will have an increase cost in maintaining the sewer lines. By having a more compact development utilizes infrastructure in a more efficient manner.

#### Historic Resources

The applicant will need to provide more information on the types of structures on this site to determine if there are structures that may have historic importance.

#### Water & Sewer

The City and County has just completed Phase I of sewer study. This study identified portions of the conveyance system from the Tuscarora Interceptor to the Ballenger McKinney WWTP which are currently experiencing, or will experience, capacity issues in the future.

Upon the completion of Phase I, the City and County requested our consultant, Whitman, Requardt & Associates (WR&A) to identify and evaluate improvements to the Monocacy Interceptor which would create incremental capacity for growth for the next 5 to 7 years while larger improvements would be analyzed in Phase II of the Study. This analysis was completed as an amendment to Phase I of the study (Amendment No. 1, January 2012). The analysis identified three improvements which would free up capacity in the system as a short term solution. Phase II is anticipated to be completed toward the end of 2012 and will establish an order of improvements based on observations from Phase I with associated time increments and estimated costs of completion.

#### Parks

As one of the requirements with the 2009 Crum Annexation, the applicants will be required to dedicate 22 acres public parkland during the Planning Commission review process. A 22 acre park (with the possibility for expansion) would be a great asset to the development and the City. For a point of reference, Monocacy Village Park is 10 acres in size. This new park should be free of encumbrances (environmental and easements).

With the proposed Willowbrook Road Extended bisecting these two parcels (2009 and 2012 Crum Annexations), it will create a divide between amenities in the community. This can be seen in North Crossing and Clover Ridge where residents must cross Christopher's Crossing to access the amenities. Staff would suggest some type of pedestrian under pass be provided to help facilitate pedestrians and cyclists access to both sides of the development.

The Shared Use Path along Tuscarora Creek and working its way up to core residential area of this annexation would be a desirable amenity. Even if the path needs to follow the collector road, this would allow easy access to the trail system.

On the County's Bikeways and Trails Plan (adopted 1999), Willow Rd South of Willowbrook to City Line; Willowbrook North of Willow to Sundays Lane; Sundays Lane from Willowbrook to Bartgis; and Bartgis to and including Devilbiss are all shown in the plan as proposed on-street bike lanes.

Based on these objectives, the Land Use Policy Map is layered in three different tiers.

### **FIRST TIER GROWTH: INFILL AND REDEVELOPMENT OPPORTUNITIES**

First Tier growth concentrates on improving and growing the character that makes the City special. Growth in the First Tier allows the City to focus more of its resources in already developed areas rather than spreading these resources beyond existing City boundaries.

The majority of growth should take place where existing and easily updatable infrastructure is available. These locations are predominately west and northwest of downtown, and include redevelopment areas such as the Golden Mile (West Patrick Street), Jefferson Street, Rosemont Avenue, Oppossumtown Pike and US 15 corridors, the area west of downtown between Jefferson Street and Patrick Street, and the industrial area east of the Historic District which includes the new East Street Gateway.

Redevelopment projects face barriers such as increasing land values, high development costs, site constraints and market preferences. In light of these challenges, it is likely that a significant percentage of the City's First Tier growth will be in the form of new development on many of the City's vacant lots. The City should consider supporting the development of these infill sites by applying updated development regulations that allow greater flexibility of building type and layout, while at the same time ensuring compatibility with adjacent areas.

### **SECOND TIER GROWTH: MUNICIPAL GROWTH BOUNDARY**

Second Tier growth describes development that will take place within the next twenty years. This Municipal Growth Boundary follows the boundary of the Potomac River Water Supply Agreement (PRWSA). This is the City's water supply agreement with Frederick County. The Second Tier areas are generally contiguous to developed areas, and are locations that can easily be served by City and County utilities. The intent of the Second Tier boundary is to ensure the efficient provision of services, and to allow the City to develop in phases to preclude "sprawl" development.

Development within the Second Tier is expected to support a compact development pattern, to allow for pedestrian accessibility, and to demonstrate that the City can recover both the capital and service demand costs associated with development. Second Tier developments would also be expected to be compatible with existing development, and to demonstrate a compelling community benefit.

### **THIRD TIER GROWTH: FUTURE GROWTH AREAS**

The Third Tier growth boundary represents the City's future outer growth boundary, and identifies properties proposed for annexation into the City after Tiers One and Two have been substantially developed, generally in the 20-25

LU Table 1

Percentage of City Population: 1980-2008

Year	Frederick City	Frederick County	Percentage of City
1980	28,086 <sup>(4)</sup>	114,792 <sup>(4)</sup>	24.60%
1990	40,186 <sup>(4)</sup>	150,208 <sup>(4)</sup>	26.70%
2000	52,767 <sup>(4)</sup>	195,277 <sup>(4)</sup>	27.00%
2008	61,668 <sup>(1)</sup>	231,948	26.60%
2010	62,995 <sup>(2)</sup>	243,200 <sup>(2)</sup>	26.00%
2020	74,854 <sup>(3)</sup>	287,900 <sup>(2)</sup>	26.00%
2030	85,039 <sup>(3)</sup>	339,700 <sup>(2)</sup>	26.00%

(1) Frederick County Estimates

(2) Maryland Department of Planning

(3) Assumption Based on Historical Data

(4) U.S. Census

year timeframe. Properties included within the Tier Three Growth Boundary lie outside of the service area currently delineated in the Potomac River Water Supply Agreement, and the City's ability to serve these properties with municipal services has not yet been evaluated. However, these properties are identified on the Land Use Policy Map to indicate to the Maryland State Department of Planning, Frederick County, and surrounding municipalities that the City intends to plan for the future development of these properties, and thereby to preempt potentially inconsistent and/or incompatible land use recommendations and/or zoning approvals for these properties that may otherwise originate in other jurisdictions.

LU Table 2

Tier One and Two Build Out Projections

Property Area	Dwelling Units	Population	Non-Residential Square Feet
Tier One	5,550	13,320	5,100,000
Tier Two	3,635	8,724	4,375,000
Total	9,185	22,044	9,475,000

Tier II Properties

<u>Number</u>	<u>Name</u>	<u>Acres</u>	<u>Average Daily Demand GPD</u>	<u>Property Annexed</u>
1	Crum - Denny	362	506,800	362
2	Thatcher	108	151,200	108
3	Ritchfield	139	194,600	
8	Sagner	64	48,000	64
9	Bartgis	48	36,000	
10	Rice	37	27,750	
11	Rothenhoeffer	11	27,750	
12	Desando	4	3,000	
13	Albaugh	67	50,250	
14	Keller	206	154,500	206
15	Staley	72	54,000	
17	Hooper	124	93,000	
19	Oden	80	60,000	
22	Blentinger Road	28	9,250	
37	Bowers, Lee Nalin	220	308,000	220
39	Gladhill	76	152,000	76
41	Klien	12	30,750	
49	Summers	100	86,242	100
50	Summers & Adjacent	55	27,500	
51	Umbeger	125	175,000	
62	Crum & Staley		33,500	
TOTALS		1,938	2,229,092	1,136
			Percentage	58.6



RESOLUTION NO. 09-18

A RESOLUTION TO PROVIDE FOR THE ENLARGEMENT OF THE CORPORATE BOUNDARIES OF THE CITY OF FREDERICK BY EXTENDING THE CORPORATE LIMITS OF THE CITY AND IN SO DOING TO AMEND ARTICLE 1, ENTITLED "INCORPORATION AND GENERAL GOVERNMENT," SECTION 2, ENTITLED "BOUNDARIES," OF THE CHARTER OF THE CITY OF FREDERICK TO PROVIDE FOR THE ANNEXATION OF 285+/- ACRES OF LAND, MORE OR LESS, ON THE NORTHERN BOUNDARY OF THE CITY.

BE IT RESOLVED, that the corporate limits of The City of Frederick shall include all property lying within the following boundaries:

see attached entitled "Exhibit A".

BE IT FURTHER RESOLVED, ENACTED AND ORDAINED, by the Mayor and Board of Aldermen of The City of Frederick, that the boundaries of the City as provided in the Charter of The City of Frederick, as the same was enacted by the General Assembly of Maryland in Chapter 557, of the Laws of 1953, be amended to include the above-described Property (the "Property"), and the City Engineer shall so amend the description of the corporate limits to include all the Property more particularly described in "Exhibit A".

BE IT FURTHER RESOLVED, ENACTED AND ORDAINED that the Property and the persons residing on the Property are included for all purposes and subject to the Charter and Ordinances of said municipal corporation in said area as if the Property had been originally or subsequently included within the boundaries of said municipal corporation, EXCEPT as set forth to the contrary in the conditions applying to this annexation, as hereinafter set forth.

The conditions of this annexation are as follows:

1. Petitioners, Crum Farm Land Development, LLC, a Maryland Limited Liability Company, and Crum Farm Commercial Development, LLC, a Maryland Limited Liability Company (collectively, the "Petitioners"), shall pay the costs of any required advertising of this Annexation Resolution.

2. The Property shall be added to the corporate boundaries of The City of Frederick (the "City") and the Property and any persons residing on the Property shall be generally subject to the provisions of the Charter of the City, except as set forth to the contrary in the following paragraphs of this Annexation Resolution.

3. Except as set forth below, Municipal *ad valorem* real estate taxes (hereinafter, "City taxes") shall not be imposed on the Property until the following:

(a) As to "Phase 1," as defined herein, Petitioners requesting and the City issuing a Building Permit to begin construction of the initial dwelling unit on the Property pursuant to the MU-1 zoning district;

(b) As to "Phase 2," as defined herein, the completion and opening to the general public of a grade separated interchange at U.S. 15/Biggs Ford Road (Willowbrook Road);

(c) The above notwithstanding, City taxes shall be imposed upon the Property to reflect current use (e.g., in the event that City taxes are imposed on all or some of the Property based upon MU-1 zoning, but the Property is used in whole or in part for agricultural uses, then the Property or part of the Property used for agricultural uses shall be subject to City taxes based upon agricultural tax assessment available under applicable property taxation laws and procedures) upon the date of twenty (20) years following the effective date of this Resolution, and

(d) Until such time as City taxes are imposed on the Property as set forth above, the City is not obligated to provide any services to the Property otherwise provided by the City for other City properties.

4. Extension of sanitary sewer, water and storm drain lines, streets, curbs, gutters, and all other public improvements typically provided by the City to and within the Property, to the extent allowed by law and unless provided otherwise by this Annexation Resolution or by written agreement (e.g., Developer's Rights and Responsibilities Agreement), shall be at the expense of the owner(s) or developer(s) requesting same; provided, however, that extensions of all such services beyond the boundaries of the Property owned by the Petitioners, including but not limited to, the lateral connection to public water and sanitary sewer from the trunk lines installed by Petitioners, and connection or tap fees, shall be at the expense of the owner desiring such services. Notwithstanding anything in the foregoing to the contrary, the Petitioners acknowledge that, as of the effective date of this Resolution, sanitary sewer service to the Property shall be provided by Frederick County, not the City.

5. Provided such extensions are requested under the terms outlined herein, and provided such Property is within the municipal boundaries of the City, the City will allow Petitioners, at its expense, to extend sanitary sewer and water service to the Property. In accordance with and subject to City law and regulations governing the allocation of public water, the City will allocate water taps to the Property at the time the extensions are completed and inspected by the City, and such taps are requested by the owner(s) or developer(s). Allocation of water taps to the Property shall be in accordance with City laws, rules and regulations, as may be amended, in effect at the time such taps are allocated. All water tap fees will be paid to the City by the owners or developers requesting the same. All water engineering plans will be submitted to the City Engineer for review and approval. Sanitary sewer service to the Property shall be provided by Frederick County, not the City. All sewer tap fees will be paid to the County by the owners

or developers requesting the same. All sewer engineering plans will be submitted to the County Division of Utilities and Solid Waste Management for review and approval. The City makes no representation regarding the availability or approval of said sanitary sewer service. However, since sewer service to the Property is to be provided by Frederick County, the City shall cooperate and make reasonable best faith efforts to ensure that timely allocation of sewer capacity is reserved for development of the Property and that necessary improvements (not by the City) to allow service to the Property are timely constructed. Petitioners also acknowledge that under these circumstances (*i.e.*, County sewer service), the City is not required to allocate water for development of the Property until such time as adequate sanitary sewer capacity allocation is obtained from the County.

6. Subject to all appropriate laws and administrative requirements, and simultaneously with its annexation into the corporate boundaries of the City, the Property is hereby classified in the City's MU-1 (Mixed-Use) zone, with development of a mixed-use project ("Project") with a development mix of uses allowable under the MU-1 zone and equivalent to the volume of water usage in accordance with the Potomac River Water Supply Agreement, but not to exceed 1,200 dwelling units and 1,300,000 s.f. of non-residential uses (the "Maximum Development"). The City hereby finds that the development of the Maximum Development in the MU-1 zone is not consistent with the existing zoning classification in Frederick County, and the City will cooperate with Petitioners in all regards and make all reasonable efforts to seek the express consent and approval by the Board of County Commissioners of Frederick County, Maryland, of the inconsistency pursuant to Article 23A, Section 9(c) of the Annotated Code of Maryland. The Highway Noise Overlay Zone will also apply to a portion of the Property pursuant to the Land Management Code provisions applicable to the Highway Noise Overlay Zone.

7. Petitioners acknowledge, subject to the terms of this Agreement, that the contemplated development of the Property is subject to the City's Adequate Public Facilities Ordinance as set forth in Chapter 4 of the Frederick City Code (hereinafter "APFO") to insure that public roads, schools, water and sanitary sewer facilities area available and adequate to serve the proposed development. The City agrees that it will, to the extent possible, reasonably cooperate with the Petitioners following annexation of the Property to secure the public facilities necessary to accommodate the proposed development so that the development may satisfy the APFO.

8. Notwithstanding the requirements of the Land Management Code, other provisions of the City Code (including the APFO) and as may be established by other written agreement (*e.g.*, a Developer's Rights and Responsibilities Agreement) applicable to the development approval process for development of the Property in the MU-1 zone, the following rights and requirements relating to the development of the Property in the City shall apply:

(a) At the time of initial record plat of subdivision recordation for Phase 1 (as described below), Petitioners shall, at no cost to the City, dedicate right-of-way for the extension of Willowbrook Road from the intersection of Oppossumtown Pike to the Phase 1 area of the Property (as such area is roughly shown on Exhibit "B" hereto) (the "Willowbrook Road Extension");

(b) No building permit for any dwelling units in Phase 1 shall be issued by the City until the Willowbrook Road Extension is fully designed and the completion thereof is guaranteed in a manner acceptable to the City. Willowbrook Road Extension shall be designed and constructed as a four (4) lane road section with full width right-of-way per City standards (with the cross section of improvements to be determined by the City Engineer) and Petitioners shall be permitted to develop and construct no more than 350 dwelling units in Phase 1, except as set forth below:

- (i) The scope of APFO analysis of Phase 1 relative to roads shall be limited to those intersections not to extend beyond Willowbrook Road Extension/Oppossumtown Pike and the Phase 1 improvements. The scope of the APFO analysis shall also include Willow Road and the intersections of Willow Road at each end.
- (ii) Phase 1 shall not have direct connection to Sundays Lane;
- (iii) Unless a "regional transportation or utility improvement" of higher priority to the City is identified, the City shall allocate to the construction of Willowbrook Road Extension the Two Thousand Five Hundred Dollar (\$2,500.00) per dwelling unit contribution ("Contribution") from Homewood at Frederick, MD, Inc. ("Homewood") payable to the City by Homewood for "regional transportation or utility improvements" by Annexation Resolution No. 08-89 approved and passed for Homewood on December 18, 2008. The determination as to whether the Contribution shall or shall not be allocated to the construction of Willowbrook Road Extension shall be made by the City at the time of the initial development approval for the Phase 1 development. In the event that the City, in its sole discretion, determines not to allocate the Homewood Contribution to Willowbrook Road Extension, then Petitioners shall be permitted to develop and construct 450 dwelling units in Phase 1 to offset the costs of Petitioners' funding of the Willowbrook Road Extension improvements, and
- (iv) Additional right-of-way is required to complete the Willowbrook Road Extension to City standards, as described above, only for the segment located between the intersection of Oppossumtown Pike and Tuscarora Creek. At no cost to the City relative to right-of-way acquisition and/or construction of improvements, the City shall reasonably cooperate in the acquisition of necessary right-of-way for that segment which is within the City corporate limits, which shall not obligate the City to exercise eminent domain powers. In the event Petitioners cannot obtain sufficient right-of-way to construct Willowbrook Road Extension fully to City standards for this limited segment, notwithstanding commercially reasonable efforts exercised by Petitioners, only this segment of Willowbrook Road shall be improved with a section within the existing right-of-way deemed appropriate in the sole discretion of the City, and Petitioners shall remain obligated to design and guarantee (the

"Guarantee") the completion of this segment to fully meet City standards upon required right-of-way being acquired (and the remainder of Willowbrook Road Extension shall be designed and constructed fully to City standards). The Guarantee shall remain in place until the final occupancy has occurred for the Project, at which time the guarantee shall be returned to Petitioners and all further obligations of Petitioners as to Willowbrook Road Extension shall terminate.

(c) At time of initial record plat of subdivision recordation for "Phase 2" (which is hereby defined as the remainder of the Property not included in Phase 1 as described herein), Petitioners, at no cost to the City, shall reserve sufficient right-of-way within the Property for the U.S. 15/Biggs Ford Road interchange. No building permits shall be issued (still allowing site work such as grading, infrastructure, etc.) in Phase 2 until after full funding for the design and construction of the U.S. 15/Biggs Ford Road interchange has been approved by State Highway Administration, the City and other required governmental agencies. No occupancy of any Phase 2 improvements shall be allowed by the City until the U.S. 15/Biggs Ford Road interchange is completed and open to the general public. The scope of APFO analysis of Phase 2 relative to roads shall be limited to and be defined by the intersection of Willowbrook Road Opposumtown Pike at one end and the U.S. 15/Biggs Ford Road interchange at the other end. Except as provided herein above, nothing herein shall obligate Petitioners to fund any portion of the U.S. 15/Biggs Ford Road Interchange. Phase 2 shall have no direct access to Sundays Lane unless access to U.S. 15 is denied from Sundays Lane or restricted to right-in/right-out.

To the extent legally permissible under an ordinance enacting a future City of Frederick Road Impact Fee or other similar road funding ordinance for the City of Frederick to receive infrastructure funding pursuant to development approvals, the City of Frederick may credit developer of the Property for funding provided by Petitioners pursuant to Paragraph 8(b) and (c) above against such funding requirement, to the extent such contributions were actually utilized by the City for road design, engineering or improvements and such contributions would not have been required but for the proffer of the Petitioners, and

(d) At the time of initial record plat of subdivision recordation for Phase 1, Petitioners shall dedicate, at no cost to the City, a minimum of twenty-two (22) useable/developable acres for parks, open space and/or other public uses deemed appropriate by the City from the adjacent land that is part of the Petitioners' land holdings, but is not included in this annexation, located adjacent to the Property west of Willowbrook Road Extension (as approximately located on Exhibit "B" attached hereto). In addition, with the Phase 2 build out of the Project, Petitioners shall provide on-site public use spaces in accordance with the MU-1 zone and the Land Management Code, which on-site spaces shall include a 10-15 acre parcel for an elementary school within the residential section of the Project at the request of the Frederick County Public Schools. This Resolution shall be recorded in the Land Records of Frederick County against all parcels that are part of Petitioners' land holdings and that are potentially impacted by this Resolution (Parcel 66, Tax Map 48 and Parcels 10, 26 and 102, Tax Map 57).

9. All non-residential buildings will be constructed to a minimum LEED Silver certification, and the Petitioners shall use energy efficient and environmentally sensitive design and construction standards in the design and construction of the site and buildings to be developed on the Property.


10. Coordinate with City Planning Commission, SHA and developer of the Thatcher/COPT Property to develop and provide a corridor plan for the Catoctin Mountain Scenic Byway for frontage along U.S. 15 between Sundays Lane and Willow Road. This plan shall include: 4-sided architecture, appropriate gateway signage, underground utility lines, no outdoor storage, appropriate green space (including park land and forestation, but excluding interchange and SHA dedication), landscaping and coordination of bridge design for improvements along the frontage. There shall be no residential development along the frontage of U.S. 15. The plan must be approved by the Mayor and Board of Alderman prior to approval of initial development plans for the Property in the MU-1 zone.

BE IT FURTHER RESOLVED, ENACTED, AND ORDAINED, that the Mayor shall give public notice of the introduction of this Annexation Resolution at least four (4) times at weekly intervals in the Frederick News-Post, a newspaper of general circulation in The City of Frederick and Frederick County, Maryland, briefly and accurately describing the proposed change and the conditions and circumstances applicable, and shall provide for a public hearing to be held on September 3, 2009, at City Hall, in Frederick, Maryland, at 7:00 p.m., which hearing shall be held not less than fifteen (15) days after the fourth (4<sup>th</sup>) publication of this notice.

BE IT FURTHER RESOLVED, ENACTED, AND ORDAINED, that this Annexation shall become effective forty-five (45) days after the passage of this Annexation Resolution unless a proper petition for referendum pursuant to Article 23A, Section 19, of the Annotated Code of Maryland, be presented to the Mayor within said forty-five (45)- day period.

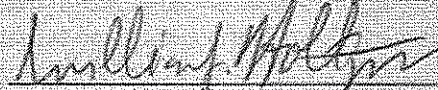
INTRODUCED at a regular meeting of the Mayor and Board of Aldermen of The City of Frederick on April 2, 2009.

APPROVED: September 4, 2009



William J. Holtzinger, Mayor

PASSED: September 4, 2009

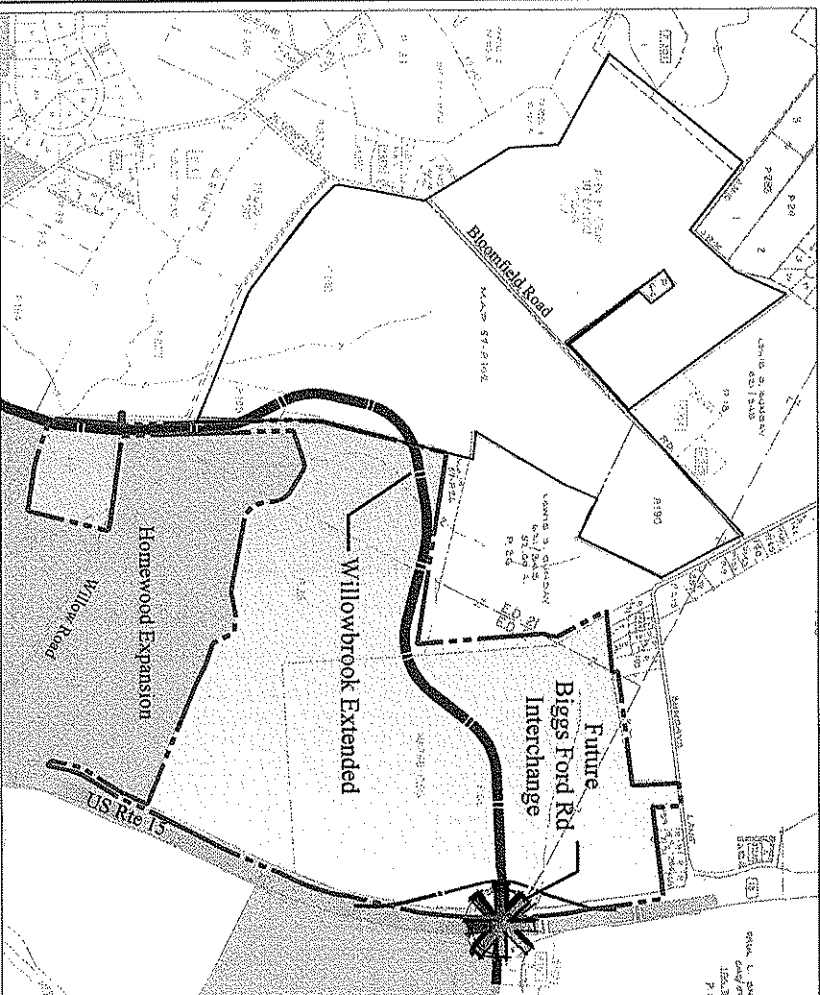


William J. Holtzinger, President  
Board of Aldermen

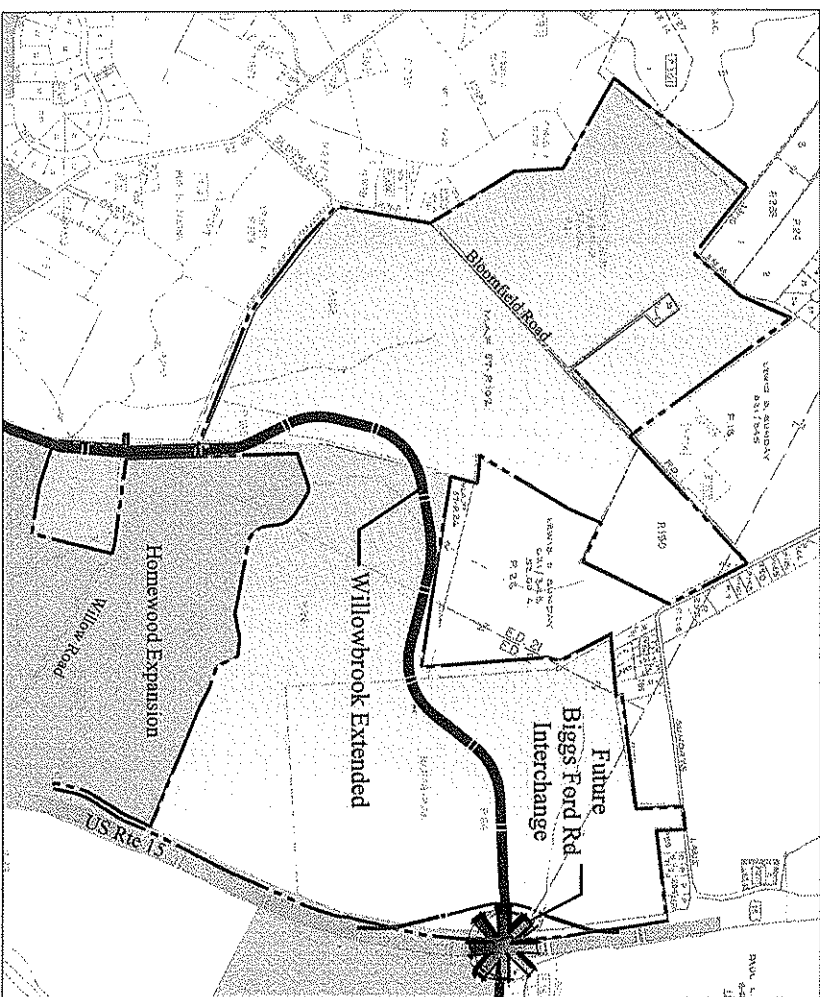
REVIEWED AND APPROVED FOR LEGAL SUFFICIENCY:



Sandra A. Nickols, City Attorney



Approved Annexation (East Only)  
±285 acres



Combined Annexation (East & West Properties)  
±535 acres

Note: Applicant is not seeking any material changes to the conditions of annexation under resolution #09-18

# Crumland Farm

## Comparison of Annexation Areas

GRAPHIC SCALE

0 100 200 300 400

1 NODS = \$5000

Prepared For: **Cum Firm Land Development, LLC & Cum Firm Commercial Development, LLC**  
2990 Bushwell Road, Suite 200  
Rockville, Maryland 20850  
Contact: Mr. Cameron Pratt

Prepared By: **RODGERS CONSULTING**  
10000 Greenway Parkway, Suite 200  
Rockville, Maryland 20850  
Tel: (301) 948-4400  
Fax: (301) 948-4401  
www.rodgersconsulting.com

Date: Jan 2012 Job No. 5108  
Street 1 of 1

U.S. EPA's monitoring of Perchlorate in Public Water Systems Comparison of Accruals from May 1, 2012 to May 24 by EPA Region. 2012. 11-01-2012.

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**Planning Commission Workshop  
Project Summary**

Project Number	PC12-229ZTA
Project Name	Section 417(e) Phasing
PC Workshop Date	April 16, 2012

**Proposal:**

The Applicant is requesting an amendment to Section 417, *Mixed Use Districts (MU-1 and MU-2)*, of the Land Management Code to address the phasing requirements for mixed use developments. Specifically, the Applicant is proposing to amend subsection (e), *Phasing*, to allow for 75% of the non-residential component of an MU project to be developed provided that at least 25% of the dwelling units are constructed OR are platted in the Land Records.

**Important Issues:**

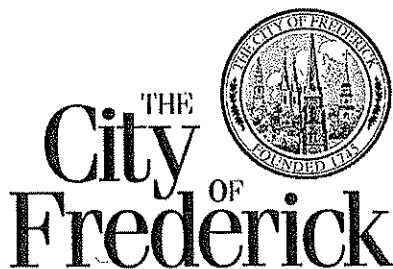
In the Applicant's justification statement they have identified the impetus for the proposed changes as issues that have evolved with the Market Square project. While the case in point serves as an example of complications that may be imposed by existing regulations, Staff would remind the Commission that any approved amendments will apply City wide to all projects which are subject to Section 417 of the LMC.

As noted above, the Applicant's revisions are to subsection (e). Currently, no more than 75% of the non-residential component of an MU project may be constructed until at least 25% of the residential dwelling units are physically constructed. The proposed amendment will lower this threshold a bit by allowing a developer to construct up to 75% of the non-residential component as long as 25% of the lots are recorded by plat in the Land Records of Frederick County, but not actually constructed. Conversely, subsection (e) also stipulates that no more than 75% of the residential dwelling units may be permitted until at least 25% of the non-residential floor area is constructed. The Applicant is not proposing any changes as it relates to this threshold.

Staff concurs with the Applicant's assessment that the existing regulations were drafted to ensure completion of both components by a developer and also finds that the intent is to ensure a symbiotic relationship between the two; with residents to support the non-residential components and non-residential uses available to support the daily needs of the new residents-- a key feature of the MU districts. By the recordation phase a developer has made major investments in a project including master plan and preliminary subdivision plat approval through the Planning Commission and improvements plan approval and bonding of all public improvements to be constructed. As such, the proposed amendments do not compromise the intent of the regulations from an accountability perspective.

In its implementation, however, Staff would note that proposed changes could be significantly different depending on the composition of the residential component. For example, single family or townhouse/duplex dwellings are all constructed on

individual lots, as such, a significant number of lots may have to be recorded to meet the 25% minimum, whereas, in a project that is primarily multifamily, there may only be one large lot recorded. In order to ensure that the one large lot actually accounts for 25% of the dwelling units within the development, a final site plan will have to be approved. Staff will continue to explore if the proposed language needs to be further revised to ensure that all situations are adequately covered, however, in general is not opposed to the amendments which would offer greater flexibility in the construction sequencing of a mixed use project.



For Official Use Only	
PC Case Number:	
Hearing Date:	
DRC Date:	
Text Amendment Fee:	\$
\$4,400.00	
Date Paid:	

Planning Department \* 140 W. Patrick Street \* Frederick, Maryland 21701 \* 301.600.1499

## APPLICATION FOR LAND MANAGEMENT CODE TEXT AMENDMENT

Please legibly print or type the following Land Management Code Text Amendment Application in its entirety. Incomplete applications will not be accepted. Submit the application, along with fee, and **twenty eight (28)** copies of the application and support documentation on or before 3:00 p.m. on the application deadline date.

OWNER INFORMATION	
Name:	Market Square at Frederick, L.L.C.
Firm/Company:	JBG Rosenfeld Retail, James Garibaldi
Address:	4445 Willard Avenue, Suite 700, Chevy Chase, MD 20815
Phone:	301-657-7322 email: jgaribaldi@jbgr.com
REPRESENTED BY - OWNER'S AFFIDAVIT MUST BE SUBMITTED WITH APPLICATION.	
Name:	David A. Severn, Esquire
Firm/Company:	Severn, O'Connor & Kresslein, P.A.
Address:	50 Carroll Creek Way, Suite 340, Frederick, MD 21701
Phone:	301-682-9840 email: dsevern@fredericklaw.com
All correspondence will be sent to the applicant. If the owner also wishes to receive a copy, please check box: <input type="checkbox"/>	
ORDINANCE BEING CHANGED	
LMC Section No:	417(e) - "Phasing"
Text:	<p>Article 4 of the LMC entitled "ZONING", Section 417 entitled, "Mixed Use Districts (MU-1 and MU-2), Subsection (e) entitled "Phasing", states "Construction of the MU project must be phased such that:</p> <p>"...(2) No more than 75% of the non-residential floor area is permitted until at least 25% of the dwelling units are constructed."</p>

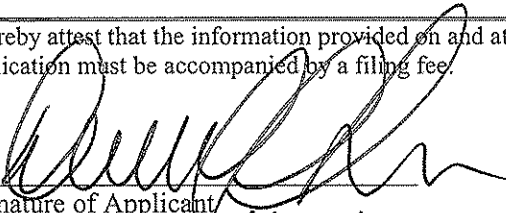


**Proposed Amendment:**

(2) No more than 75% of the non-residential floor area is permitted until at least 25% of the dwelling units are constructed OR AT LEAST 25% OF THE RESIDENTIAL LOTS ARE SUBDIVIDED AND RECORDED AMONG THE LAND RECORDS.

I hereby attest that the information provided on and attached to this application is complete and correct. This application must be accompanied by a filing fee.

Signature of Applicant

  
**AUTHORIZED AGENT**

Date

3/27/12

Application may be made by any citizen or official or agency of the City, per Section 306(c) of the LMC.

**Required Attachments:**

A. Statement to explain or support the requested amendment.

See attached Justification Statement in Support of LMC Text Amendment.



**JUSTIFICATION STATEMENT IN SUPPORT OF**  
**LMC TEXT AMENDMENT**  
**Section 417 (e) entitled “Phasing”**

**Legal Authority**

Article 1 entitled, “GENERAL PROVISIONS”, Section 102 entitled, “Authority”, of the **City of Frederick Land Management Code** (“LMC”), Appendix A of the **Frederick City Code** (“Code”), adopted by the Mayor and Board of Aldermen on July 21, 2005, as amended, states that the LMC is established in accordance with the provisions of Article XV of the **Charter of the City of Frederick** (“Charter”) and (among others) the provisions of **Article 66B**, Section 4.01 et seq. (development regulations and zoning) of the **Annotated Code of Maryland**, as amended (“Article 66B”).

Article 2 of the LMC entitled, “ADMINISTRATIVE AGENCIES”, Section 201 entitled, “Mayor and Board of Aldermen”, sets forth the powers and duties of the Mayor and Board of Aldermen of Frederick City (“Mayor and Board”) pursuant to the LMC. Subsection (a) of Section 201 states that the Mayor and Board have the power to, “render final decisions pertaining to the amendments to the Comprehensive Plan and this Code.” Subsection (h) of Section 201 provides that the Mayor and Board shall have the power to, “exercise all additional authority, power and duties granted by Maryland law”

Section 4.04 of Article 66B entitled, “Same-Procedure; public hearings; notice”, Subsection (a) entitled “Procedure” states that a “local legislative body shall provide for the manner in which its regulations and restrictions and the boundaries of its districts shall be determined, established, enforced, and periodically amended or repealed”

Section 4.05 of Article 66B entitled, “Same—Amendment, repeal and reclassification”, Subsection (a) entitled “Periodic amendments or repeals; findings of fact.” Subparagraph (1) states that “Zoning regulations, restrictions, and boundaries may periodically be amended or repealed”

Article 3 entitled “PROCEDURES”, Section 301 entitled, “General Procedural Requirements”, and Section 306 entitled, “Text Amendments and Zoning Map Amendments” of the LMC establish the process for amending the LMC.

**Section of LMC to be amended**

Article 4 of the LMC entitled “ZONING”, Section 417 entitled, “Mixed Use Districts (MU-1 and MU-2), Subsection (e) entitled “Phasing”, states “Construction of the MU project must be phased such that:

“...(2) No more than 75% of the non-residential floor area is permitted until at least 25% of the dwelling units are constructed.”



## Proposed Text Amendment

(2) No more than 75% of the non-residential floor area is permitted until at least 25% of the dwelling units are constructed OR AT LEAST 25% OF THE RESIDENTIAL LOTS ARE SUBDIVIDED AND RECORDED AMONG THE LAND RECORDS.

## Justification for Text Amendment

The Market Square Development received the Mixed Use-1 (MU-1) zoning district classification as part of Frederick City's 2005 Comprehensive Rezoning and adoption of the LMC. The Frederick City Planning Commission approved a Master Plan for the mixed use development of Market Square at Frederick ("**Master Plan**") located at the intersection of Maryland Route 26 and Wormans Mill Road on March 12, 2007 ("**Market Square**"). The approved Master Plan contemplates a mixture of 464 single family, multi-family and townhouse and Live/Work units ("**Residential Component**") and 197,945 square feet of commercial retail space ("**Commercial Component**") within Market Square. Preliminary Subdivision Plan approval for the Residential Component was granted by the Planning Commission on November 19, 2007, and for the Commercial Component on November 19, 2007. Site Plan approval for the townhouse and multi-family dwelling units within the Residential Component was granted by the Planning Commission on April 12, 2010, and for the Commercial Component on March 8, 2010. An amendment to the Master Plan was approved by the Planning Commission on February 14, 2011, and amendments to the Preliminary Subdivision Plan were approved by the Planning Commission on December 14, 2009 and April 11, 2011. An amendment to the Site Plan for the Commercial Component was approved by the Planning Commission on August 8, 2011. An amendment to the Site Plan for the Residential Component was also approved by the Planning Commission on July 11, 2011.

Final subdivision plats for Phase 1 of the Residential Component were approved and recorded by the Planning Commission among the Frederick County Land Records on August 31, 2011 in Plat Book 90, pages 41-43. Final subdivision plats for the Commercial Component were approved and recorded by the Planning Commission among the Frederick County Land Records on December 27, 2011 in Plat Book 90, pages 113 and 114 (the "**Record Plats**").

Grading, installation of utilities, water, sewer, roads, storm water management facilities and other infrastructure have been substantially completed for 73 dwelling units within Phase 1 of the Residential Component, and will also be substantially completed for the remaining 42 Phase 1 dwelling units in the Spring of 2012. Twenty-nine (29) dwelling units are under construction and should be complete within ninety (90) days. Additional public infrastructure has been financially guaranteed to the City by Market Square at Frederick, L.L.C. ("the Applicant") as a requirement for the recording of the Record Plats (and any future subdivision plats).



In addition to contracting with private builders for the sale and construction of new homes within the Residential Component, the Applicant is actively engaged in leasing the proposed buildings within the Commercial Component of Market Square. However, due to the requirements of Section 417 ( e ) of the LMC, requiring at least 25% of the dwelling units within the Residential Component to be constructed **BEFORE** more than 75% of the commercial floor area is permitted has resulted in a severe limitation on the marketing and leasing of the commercial floor space, which in turn negatively affects residential sales. Unlike residential units which are typically constructed in phases, commercial space is often constructed all at once to accommodate tenants and avoid the future construction of buildings after large commercial tenants have already occupied their space. It also creates the appearance of a "partially-constructed" commercial center that is often an indication to potential tenants that the developer has run out of money or that the development is in trouble. This also has a "domino effect" on residential sales and construction of what is supposed to be an integrated, mixed use, pedestrian friendly development. The Applicant maintains that this was never the intention of the LMC. One of the purposes of the Mixed Use District, as stated in Section 417 of the LMC, is to encourage "the incorporation into a single project a compatible mixture of residential, commercial, employment, recreational, civic and/or cultural uses..."

The Applicant avers that the phasing requirements of Section 417 ( e ) were intended to prevent a MU project from being approved for a mixture of residential and commercial uses but only being developed for a long period of time as entirely residential or entirely commercial thereby defeating the purpose of the MU District. The Applicant supports that intended objective of the LMC phasing requirement for the MU District. However, the Applicant believes that this objective and safeguard can be maintained without causing the MU project to fail due to unintended consequences of the language of the LMC as it relates to the exigencies and realities of the commercial and residential markets. In developments like Market Square, residential sales and construction typically lags behind commercial leasing in the market place. Commercial construction and leasing is a substantial incentive to new home sales and construction.

Given the significant investment required of a developer in obtaining Master Plan, Preliminary Plan and Site Plan approvals for development within a MU project, and particularly the costs of engineering, permitting, financially guarantying to the City and/or constructing public improvements and other infrastructure prior to and as part of the approval and recording of final subdivision plats for residential units, the Applicant avers that the recording of residential lots will more than adequately assure the timely and actual construction of residential units so that the MU project is not constructed in an unbalanced or unmixed manner with only commercial uses.

The proposed Text Amendment will allow commercial leasing and full construction to proceed as required by the market so that Market Square (and other MU projects) do not appear unfinished or troubled and to assure potential tenants that the project is viable and future construction will not be occurring within the Commercial Component to disrupt their tenancies.





Planning Department \* 140 W. Patrick Street \* Frederick, Maryland 21701 \* 301.600.1499

### AGENT AUTHORIZATION LETTER

I / WE, James Garibaldi, representing  
(Individual's name -- please type or print in ink)

Market Square at Frederick, L.L.C.

(Corporate name, if applicable)

being the current owner(s) of the property legally described as follows:

do hereby designate and authorize David A. Severn, Esquire

(Individual's name -- please type or print in ink)

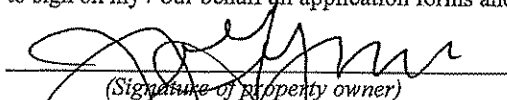
representing, Severn, O'Connor & Kresslein, P.A.

(Corporate name, if applicable)

to act as my / our agent in applying to the City of Frederick for LMC Text Amendment

approval in conjunction with the

Market Square at Frederick project involving the property described above, and  
to sign on my / our behalf all application forms and other documents which may be necessary for this purpose.

  
(Signature of property owner)

James Garibaldi

(Type or print name of signatory)

Market Square at Frederick, L.L.C.

(Title and corporate name, if applicable)

State of Maryland, County of Howard

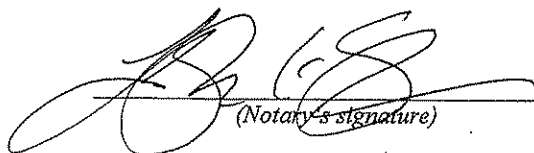
The foregoing indenture was acknowledged before me this

27<sup>th</sup> day of March, 2012

by James Garibaldi

who is personally known to me, or who has produced

as identification, and who did / did not take an oath.

  
(Notary's signature)

Notary Public, State of Maryland

Commission No. N/A My Commission Expires: December 3, 2014

Name of notary (typed, printed, or stamped)

Rev. 2/11/08

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